Supreme Court, U.S.
FILED

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In The
Supreme Court of the United States

PYARA SINGH BHATTI; ET AL.,
Petitioners,
v.

JASBIR SINGH; ET AL.,
Respondents.

Petition For A Writ Of Certiorari To The Supreme Court of Ohio

PETITION FOR A WRIT OF CERTIORARI
with Appendix

***ROBERT B. NEWMAN**
NEWMAN & MEEKS, CO., L.P.A.
617 VINE STREET, SUITE 1401
CINCINNATI, OHIO 45202

513-639-7000

Attorney for Petitioner
Counsel of Record

December, 2002

LEGAL ADVANTAGE • 432 Walnut Street • Cincinnati, OH 45202
(800) 581-2252

47 pp

QUESTION PRESENTED

In resolving intra-church disputes by ordering a congregational election of church trustees, does the First Amendment require that the court remain neutral in the election and assure that the election is conducted democratically and with procedural fairness?

LIST OF PARTIES

Petitioners:

Jasbir Singh
Inderjit Singh
Sohan Singh Bilkhu
Narinder Singh
Shashpal Singh
Gurjit Singh

Respondents:

Pyara Bhatti
Santokh Singh Bhatti
Puspinder Singh Bhatti

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PETITION FOR A WRIT OF CERTIORARI

Petitioners, Jasbir Singh et al, respectfully pray that a writ of certiorari be issued to review the final judgment of the Supreme Court of Ohio.

OPINIONS BELOW

The decision of the Court of Common Pleas of Butler County, Ohio was issued on August 24, 2001. The Court of Appeals for the 12th Appellate District of Ohio affirmed the Court of Common Pleas on June 28, 2002, and a timely appeal was taken to the Ohio Supreme Court. The Ohio Supreme Court declined to hear the appeal on October 2, 2002.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1257 to review the entry of the Supreme Court of Ohio.

STATUTORY PROVISIONS INVOLVED

First Amendment to the United States Constitution:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT OF THE CASE

This case involves a factional dispute in a religious body of the Sikh religion. The State trial court decided that the attempt to incorporate the Guru Nanak Society by one faction (Petitioners) was improper and that the original constitution of the unincorporated association remained intact. The trial court then ordered a new election for trustees to be held, and empowered the other faction (Respondents) to compose an interim committee to conduct the election, and determine the eligible voters.

This dispute between two factions of the Cincinnati area religious organization – The Guru Nanak Society of the Sikh religion dates back to 1993. At this time, members of the Guru Nanak Society decided to raise money for the construction of a place of worship, which is called a Gurudwara. (App. p. 25.) Up to this time, there was a 1985 Constitution in place for the unincorporated association. (App. p. 23).

In order to raise money for the place of worship, members decided that any local Sikh who donated $5,000 by December 31, 1995 to the building campaign would become a permanent Trustee of the organization and also the Society would formalize itself as a non-profit corporation.

(App. p. 5.) (Tr. p. 494). There were possibly 30 to 50 families involved with the Guru Nanak Society during this period. (Tr. p. 712, 720).

Fundraising was conducted locally as well as in other Sikh communities around the country and in Toronto, Canada. (Tr. p. 815).

In May of 1998 shortly after the completion of the Gurudwara, Gurjit Singh sent the notice to those people who had made a $5,000 contribution asking them to attend the meeting to see who would be willing to sign the revised Articles of Incorporation. A meeting was held on May 24, 1998, and it was evident that the unanimous support for the corporation did not exist. (Tr. p. 511).

During the services on January 17, 1999, Gurjit Singh addressed the congregation concerning membership fees and the signing of the Articles of Incorporation. Gurjit Singh testified, "I talked to the congregation, everybody felt we needed to have a legal system in place." (Tr. p. 516). A scuffle and argument developed between Santokh Bhatti and

Pushpinder Bhatti with Gurjit Singh; ultimately the police were called and criminal charges were filed.

Following the meeting, the Articles of Incorporation were signed by five Trustees (Jasbir Singh, Sohan Singh Bilkhu, Inderjit Singh, Narinder Singh and Shaspahl Singh). The Articles were filed with the Secretary of State on February 11, 1999. (App. p. 6.) (Joint Trial Exhibit X1).

On March 30, 1999, suit was filed in the Butler County Court of Common Pleas by Pyara Singh Bhatt, Santokh Singh Batti and Pushpinder Singh Bhatti, (Respondents) who alleged that they were members of the Guru Nanak Society, that the Guru Nanak Society was an unincorporated association, that the incorporation of the Guru Nanak Society was without the consent and approval of the general body, and that the Petitioners had improperly conveyed assets of the Gurudwara to the corporation. Respondents sought an injunction against the use of the name Guru Nanak Society by the corporation and an injunction requiring the conveyance of the realty back to the Guru Nanak Society, the unincorporated association. In addition, Respondents sought an order convening the general body and an election for a new slate of trustees. (App. p. 21.)

The trial court rendered a decision on July 26, 2001, (App. p. 20), and a final appealable order on August 24, 2001. (App. p. 17.)

In its decision, the trial court noted that the parties "ranged from a very conservative and traditional belief to a more contemporary or liberal practice of the Sikh religion" (App. p. 22.) The court also stated that it wished to address the case to avoid affecting the freedom of religion of any of the parties. (App. p. 22.)

The court recognized that the Articles of Incorporation were granted by the Secretary of State on February 26, 1999, which followed a meet-ing of the Gurudwara on January 17, 1999, in which "[Petitioners] claim the Articles of Incorporation were approved by the general body of the Temple. That issue is strongly contested by the [Respondents] in this case." (App. p. 26.) The court held however that, ". . . the formal requirements to amend the bylaws and incorporate the Guru Nanak Society into a corporation have not been followed and therefore are void *ab initio* . . . ", (App. p. 27), and that the Guru Nanak Society had been improperly incorporated. (App. p.27.) The court then ordered an election to be held, and directed

Respondents' counsel to submit a list of five members of the Guru Nanak Society to serve as an Interim Executive Committee to deal with "interim issues," to conduct an election, and determine who was eligible to vote (App. p. 28.)

In their appeal to the Twelfth Ohio Appellate District, Petitioners argued that by empowering the Respondents to conduct the election, determine the eligible voters, and count the votes, the court breached the church/state boundary of the First Amendment to the United States Constitution. The Court of Appeals rejected the Petitioners' arguments, and the Ohio Supreme Court declined to review the case.

REASON FOR GRANTING THE WRIT

I. THE COURT OF COMMON PLEAS OF BUTLER COUNTY OHIO VIOLATED PETITIONERS' RIGHTS UNDER THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION BY ORDERING A CONGREGATIONAL ELECTION OF CHURCH TRUSTEES, AND EMPOWERING ONE FACTION TO COMPOSE AN INTERIM COMMITTEE TO CONDUCT THE ELECTION, AND DETERMINE THE ELIGIBLE VOTERS. THE TRIAL COURT VIOLATED PRINCIPLES OF NEUTRALITY IMPLICIT IN THE FIRST AMENDMENT AND FAILED TO ASSURE THAT THE ELECTION WOULD BE CONDUCTED DEMOCRATICALLY AND WITH PROCEDURAL FAIRNESS.

By empowering one faction of this dispute to determine the manner in which the election was to be conducted, the court inserted the judiciary very heavily on one side of this election. As the trial court noted, this dispute involves persons espousing a spectrum of religious views. The court by allowing the Respondents total control over the conduct of the election gave material advantage to the Respondents and their religious values and perspectives.

The demands of court neutrality in resolving church issues or staying altogether out of church issues has been demonstrated in Watson v. Jones, 80 U.S. 679, (1871); Presbyterian Church v. Hull Church, 393 U.S. 440 (1969); and Serbian E. Orthodox Diocese v. Millivojevi 426 U.S. 696 (1976).

The lower court here, by contrast, intruded itself into the election process by deciding who was going to decide voter eligibility questions, and who was going to run the election.

The Ohio Court of Appeals in affirming the trial court's authorization of an interim committee consisting of the Respondents held,

> . . . by ordering an interim executive committee to be formed to organize and conduct elections for the Society in accordance with the Society's constitution, the trial court was insuring that the constitution of the Society would be enforced. The trial court did allow Appellees to choose all five of the interim executive committee members.
>
> However, the appellees invited appellants to name a person to the interim committee. Appellants declined.

> The interim committee also determined who were members of the Society. According to the record, the interim committee sent a list of members to appellants and received no feed-back. The record further stated that proxies, as allowed by the Society's constitution, were sent to members who could not attend the election. The record also stated that appellants did not vote at the election.
>
> The trial court did not err in ordering the formation of an interim committee to conduct an election of the executive committee . . . *[emphasis added]*

Contrary to the Court of Appeals' assumption that the appointment of an executive committee was in conformity with the Society's constitution, the constitution requires that the executive committee, rather than be appointed by any authority, must be elected from the general body membership.

The role of courts in resolving intra-church disputes must be carefully circumscribed so as to not give any advantage to one side of a factional dispute or to one side of a doctrinal dispute. In this case the two were indistinguishable. It was appropriate here for the trial court to

order an election of trustees, but the court failed to respect First Amendment neutrality norms in empowering one faction of the dispute to run the election by its choosing all five interim committee members and allowing the interim committee to determine the membership and the eligible voters.

The consequence of the trial court authorizing the appointment of an interim executive committee not only violated the Society's constitution, but also was in violation of the First Amendment to the United States Constitution.

The First Amendment considerations require that the election be set aside as was done in Bouldin v. Alexander, 82 U.S. 131 (1872) (setting aside of the election because the notice of the election was defective.)

CONCLUSION

This court should grant this Petition for Writ of Certiorari in order to clearly establish the First Amendment boundaries that must be respected by trial courts in resolving intra-church disputes, and especially where congregational elections are ordered, lower courts must take care to both remain neutral and to assure that the elections are fairly conducted in accordance with democratic principles.

Respectfully submitted,

Robert B. Newman (0023484)
Counsel for Petitioners
NEWMAN & MEEKS CO., L.P.A.
617 Vine Street, Suite 1401
Cincinnati, Ohio 45202

Telephone: (513) 639-7000
Facsimile: (513) 639-7011

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THE SUPREME COURT OF OHIO

PYARA Singh Bhatti, et al.,
Appellees,

v.

Jasbir Singh, et al.,
Appellants.

CASE NO. 02-1205

ENTRY



Upon consideration of the jurisdictional memoranda filed in this case, the Court declines jurisdiction to hear the case and dismisses the appeal as not involving any substantial constitutional question.

COSTS:

Docket Fee, $40.00, paid by Newman & Meeks, Co., L.P.A.

(Butler County, Court of Appeals; No. CA200109215)

/s/ THOMAS J. MOYER
Chief Justice

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

PYARA SINGH BHATTI, et al.,

Plaintiffs-Appellees,

-vs-

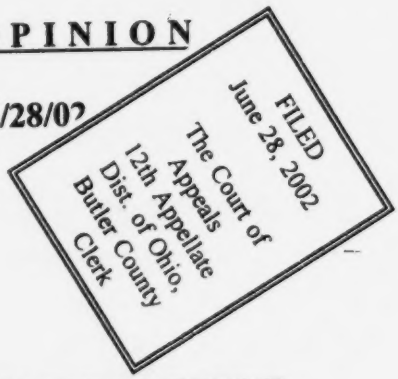
JASBIR SINGH, et al.,

Defendants-Appellants.

CASE NO. CA2001-09-215

O P I N I O N

6/28/02



CIVIL APPEAL FROM COMMON PLEAS COURT

Mann & Mann, LLC, David S. Mann, 1900 The Kroger Building, 1014 Vine Street, Cincinnati, OH 45202, for plaintiffs-appellees

Newman & Meeds Co., L.P.A., Robert B. Newman, 617 Vine Street, Suite 1401, Cincinnati, OH 45202, for defendants-appellants

YOUNG, J.

{¶1} Defendants-appellants, Jasbir Singh, Inderjet Singh, Sohan Singh Bilkhu, Naunder, Shashpal and Gurjit Singh and the Guru Nanak Society Gurudwara, appeal the decision of the Butler County Common Pleas Court, finding that appellants had improperly incorporated their religious society.

{¶2} Appellees, Pyrah Singh Bhatti, Santokh S. and Pushpinder Singh Bhatti, claim they were members of the Guru Nanak Society ("Society"). Appellees filed a complaint alleging that the appellants violated their authority and power as trustees and executive committee members respectively by failing to follow the provisions of the Society's constitution and by illegally and improperly creating an Ohio non-profit corporation, the Guru Nanak Society Gurudwara ("Corporation").

{¶3} The trial court succinctly and orderly related the facts of the case in its decision as follows:

{¶4} "*** all [parties] practice the Sikh religion. The Sikh religion was founded by Guru Nanak (1469-1539) in the form of the ten Gurus in India. Nanak's thought was shaped under the influence of the Hindu Sant tradition of Northern India. The idealistic approach of Sikhism is that it recognizes the existence of the same heavenly Light in every human being, rich or poor, high or low, irrespective of caste, creed, color, race, sex, religion or nationality. Based upon that relief, the doors of the Sikh temple (Gurudwara) are open for all in the world without prejudice or social discrimination. Under Sikh belief, every person in this world has an equal right to enter and join the services in the Gurudwara. A discussion of the Sikh religion is relevant within the context of this decision because it is the driving force behind the organization under which the [parties] practice their religion.

{¶5} "The Guru Nanak Society was first organized in southwestern Ohio in the 1970's for the purpose of practicing the Sikh religion. In May of 1985, a formal constitution was adopted by the Guru Nanak Society listing its principal place

of business to be in the City of Cincinnati, Hamilton County, Ohio. The stated purpose in the constitution was to propagate the teachings of Guru Nanak and the Sikh religion and to promote the religious, educational and cultural aspects of the Sikh religion. A final objective was to establish and maintain Sikh centers in the tri-state area.

{¶6} "Article Three of the constitution defined general memberships. It states that 'Any person irrespective of caste, creed, color, race or sex who subscribes to the objectives of the organization may become a member.' That section also provides that the annual membership fee shall be one dollar per person. Article Four defines the voting membership. Article Four states, 'All members of at least three months standing and above the age of 18 shall be eligible to vote. All voting members shall constitute the General Body.' Article Five (A) of the constitution states, 'The General Body alone, as a primary organ of the organization, shall have the power to amend or revise this constitution and the by-laws for the management of the affairs of the organization.' Article Six (A) deals with the organization of the executive committee. It states, 'There shall be an executive committee consisting of at least five (5) and not more than seven (7) elected from the General Body membership.' This section further provides that any voting member of the organization can seek election to the executive committee. This article further provides that the executive committee has the authority to perform functions on behalf of the organization in accordance with the constitution and by-laws framed by the General Body from time to time.

{¶7} "Article Twelve provides that, 'This constitution can be amended by a two-thirds (2/3) majority vote of the

members either present at a General Body meeting or by votes submitted by any other means...' The constitution became the working framework under which the Guru Nanak Society operated from its adoption through the present.

{¶8} "In 1993, the Sikh Temple of Greater Cincinnati came into existence through the filing of tax exempt forms through the state and local government. That organization co-existed at the same time as the Guru Nanak Society and both organizations continue to practice the Sikh religion. Starting in approximately 1993, an effort was made to build a gurdwara by members of the Sikh community. In March of 1994, property was deeded from a member of the Sikh community to the Guru Nanak Society to be used for the construction of a gurudwara.

{¶9} "Contemporaneously with the attempt to build the gurudwara there was also a significant fundraising effort going forward to attempt to obtain the funds for the construction of the temple. In addition, several efforts were underway by members of the Guru Nanak Society to amend the 1985 constitution and by-laws. Simultaneous to that, there were also discussions about formally incorporating the Guru Nanak Society under the laws of the State of Ohio.

{¶10} "In June of 1996 additional land was purchased for the construction of the gurudwara. Subsequently, a mortgage was filed in April of 1988 financing the construction of the temple on the new land. As part of the fundraising efforts, the fundraisers promised that any member who made a donation of five thousand dollars or more would become a permanent member of the board of trustees.

{¶11} "As previously mentioned, efforts were going on at the same time to incorporate the Guru Nanak Society to a non-profit corporation under the law of the State of Ohio. An attempt was made to file the Articles of Incorporation during this time. However, those Articles were rejected by the Secretary of State because they were improperly executed. It was not until February 26, 1999 that Articles of Incorporation were formally granted.

{¶12} "This followed a meeting at the gurudwara on January 17, 1999 in which [appellants] claim that the Articles of Incorporation were approved by the General Body of the temple. That issue [was] strongly contested by [appellees] in this case."

{¶13} The trial court found that the Corporation was improperly incorporated under the laws of the State of Ohio and thus was void *ab inito*. The trial court ordered that an interim executive committee be formed to organize and conduct an election in accordance with the Society's constitution to elect an executive committee. Also, the trial court ordered that all title to the property be placed back into the name of the Society and that the appellants provide a full accounting for the assets that they controlled. Finally, appellants were ordered to reimburse the Society for any money the Society expended for the costs of litigation. Appellants now appeal this decision raising three assignments of error.

{¶14} Assignment of Error No. 1:

{¶15} "THE LOWER COURT ERRED IN GRANTING JUDGMENT FOR THE PLAINTIFFS AND ORDERING

TITLE TO ALL PROPERTY INCLUDING THE GURUDWARA IN THE NAME OF THE GURU NANAK SOCIETY AND RELATED RELIEF."

{¶16} Appellants contend that the trial court incorrectly dissolved the Corporation by finding that is was void *ab inito* and ordering all title to property placed back in the name of the Society. Appellants assert that the trial court must follow R.C. 1702.52[1] in order to dissolve a corporation, and that the trial court did not meet these statutory requirements. Furthermore, appellants claim that because the Corporation was a corporation under Ohio law and was incorrectly dissolved, they should not have to reimburse the Society for any costs incurred in defense of appellees' lawsuit.

{¶17} R.C 1702.08 provides directions for a society or association wishing to incorporate. It states in pertinent part:

{¶18} "When an unincorporated society or association*** authorizes the incorporation of such society or association, by the same procedure and affirmative vote of its voting members as the ***constitution *** of such society or association requires for an amendment to such fundamental agreement, or if no such vote is specified, by a majority vote of the voting members ***, at a duly convened meeting the purpose of which is stated in the notice of the meeting, then

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[1] R.C. 1702.52 outlines the requirements to have a corporation judicially dissolved.

upon the filing of the articles under section 1702.04 of the Revised Code setting forth such facts and that such required votes has been obtained, such society or association shall become a corporation***." R.C. 1702.08(A).

{¶19} In the case *sub judice*, the trial court correctly determined that appellants did not follow R.C. 1702.08 in their quest to incorporate the Society. In 1985, the Society formally adopted a constitution. Among other procedural matters, the constitution describes how the Society determines general and voting membership, and conducts the voting and amendment processes.

{¶20} Pursuant to Article Five of the constitution, "The General Body alone, as a primary organ of the organization, shall have the power to amend or revise this constitution and the by-laws for the management of the affairs of the organization." Article Twelve states, "This Constitution can be amended by a two-thirds (2/3) majority vote submitted by any other means, provided that the vote is acknowledged by two other members."

{¶21} Appellants did not conform to the edicts of the Society's constitution when they attempted to incorporate the Society. Some of the trustees of the Society discussed and proposed incorporating the Society, but the record relates that no formal vote was taken by the General Body to affirmatively incorporate the Society. Appellants believed the General Body of the Society understood and consented implicitly to the incorporation of the Society. Accordingly,

one of the appellants testified that "there wasn't any need [to] vote." Hence, by not conducting a vote among the General Body, appellants did not conform to the Society's constitution when they attempted to convert the Society into a corporation.

{¶22} Consequently, the trial court correctly found that the Society was not properly incorporated pursuant to R.C 1702.08. Absent a legally created corporation, the trial court was not required to follow R.C. 1702.52. As such, the court did not err in ordering title to the Gurudwara to be placed back in the name of the Society or in ordering appellants to repay the Society for any of the Society's money used in the defense of the litigation. The Corporation did not legally represent the Society and the appellants did not have the authority to use the Society's money for defense or encumber the Society's property. Accordingly, appellants' first assignment of error is overruled.

{¶23} Assignment of Error No. 2:

{¶24} 'THE LOWER COURT ERRED IN GRANTING JUDGMENT FOR THE PLAINTIFFS AND ORDERING PLAINTIFFS' COUNSEL TO SUBMIT A LIST OF FIVE MEMBERS OF THE GURU NANAK SOCIETY TO SERVE AS AN INTERIM EXECUTIVE COMMITTEE TO DEAL WITH 'INTERIM ISSUES,' CONDUCT AN ELECTION, AND DETERMINE WHO WAS ELIGIBLE TO VOTE."

{¶25} Appellants maintain that the trial court erred in ordering an interim executive committee to be formed for the purpose of organizing and conducting an election in accordance with the Society's constitution. Appellants further contend that the individuals chosen to serve on the interim committee are all of appellees' choosing and do not represent the Society. They also maintain that it is wrong for this interim committee to determine who is a member of the organization under the Society's constitution. Finally, appellants contend that the trial court breached the "Church/State boundary" of the First Amendment in ordering the election to be conducted.

{¶26} The government has an inherent power to regulate religious activities in a reasonable and non-discriminatory manner in order to protect the safety, good order, peace and comfort of society. 16A American Juriprudence 2d (1998) 284, Constitutional Law, Section 47. However, civil courts lack jurisdiction to hear or determine purely ecclesiastical or spiritual disputes of religious organizations. Tibbs v. Kendrick (1994), 93 Ohio App.3d 35, 40. As such, where the dispute involves non-doctrinal contractual disputes, a civil court retains jurisdiction to hear the dispute. Id. At 42.

{¶27} To determine whether a court has subject matter jurisdiction over a dispute, it must perform a two-step analysis by first determining whether the organization is hierarchical[2] or congregational.[3] Id. At 43. If the organization is congregational in nature, then the court determines whether the dispute is ecclesiastical or secular in nature. Id. The court maintains jurisdiction over secular issues. Id. At 42.

{¶28} The Society operates as a congregational Sikh religious organization. Although there are many other congregations that practice the Sikh religion, the many congregations are not controlled by an overall ruling organiz-

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2 A hierarchical organization is one where the congregation is a subordinate member of a general organization in which there are superior or ecclesiastical tribunals with ultimate power of control over the whole membership of that general organization. Tibbs v. Kendrick (1994), 93 Ohio App. 3d 35, 41 and 42.

3 A congregational organization is one where the congregation is strictly independent of other ecclesiastical associations and owes no fealty or obligation to a higher organizational authority. Tibbs v. Kendrick (1994), 93 Ohio App. 3d 35, 42.

ation of the Sikh religion. Thus, conflicting claims as to the use or control of religious property are to be determined by the constitution of the religious organization. Watson v. Jones (1871), 80 U.S. 679, 706, 20 L.Ed 666.

{¶30} A thorough review of the record reveals that the Society and Corporation were not disputing doctrine or religion, but only who controlled the property, namely, the accounts and the Gurudwara. As such, the dispute did not hinge on an ecclesiastical or spiritual dispute, but a non-doctrinal property dispute. Thus, the civil court has proper jurisdiction over the case *sub judice*.

{¶31} As the violence within the Gurudwara indicates,[4] the constitution of the Society needed to be enforced. By ordering an interim executive committee be formed to organize and conduct elections for the Society in accordance with the Society's constitution, the trial court was ensuring that the constitution of the Society would be enforced. The trial court did allow appellees to choose all five of the interim executive committee members. However, the appellees invited appellants to name a person to the interim committee. Appellants declined.

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[4] During the trial court proceedings, the Society had to hire police officers to act as security during the meetings held in the Gurudwara to ensure that no outbreaks of violence would occur. Prior to the trial, there was a scuffle where a tape recorder was broken. Since the trial court meted out its decision, the police were dispatched to the Gurudwara in order to disperse a "riot."

{¶32} The interim committee also determined who were members of the Society. According to record, the interim committee sent a list of members to appellees and received no feedback. The record further stated that proxies, as allowed by the Society's constitution, were sent to members who could not attend the election. The record also stated that appellants did not vote at the election.

{¶33} The trial court did not err in ordering the formation of an interim committee to conduct an election of the executive committee. "The government of [religious organization] matters is entrusted to the membership." First Baptist Church of Glen Este v. State of Ohio (S.D.Ohio 1983), 591 F.Supp. 676, 683. Thus, appellants' second assignment of error is overruled.

{¶34} Assignment of Error No. 3:

[¶35} "THE TRIAL COURT ERRED IN DENYING DEFENDANTS' MOTION TO DISMISS MADE AT THE CLOSE OF PLAINTIFFS' CASE (T.p. 691-705)."

{¶36} Appellants maintain that appellees did not pay the membership fee required by the Society's constitution and thus have no standing to file suit against appellants or the Corporation. They contend that the court may not determine who is a member of a religious organization, but that where membership is in dispute, it "must be decided by stipulation of the parties."

{¶37} Generally, civil court lacks jurisdiction to hear or determine purely ecclesiastical or spiritual disputes of a *** religious organization. Tibbs v. Kendrick, 93 Ohio App.3d at

40. Courts have made membership determinations in the past. See Honey Creek Regular Baptist Church v. Wilson (App.1950). 59 Ohio Law Abs. 52 (where a plaintiff was found to be a member of the Church, where by custom a new member is received by the extending of the right hand in fellowship, even though he did not receive a hand because that custom had ceased to be practiced).

{¶38} Furthermore, a trial court's conclusions on a motion to dismiss pursuant to Civ.R. 41(B) 92) may not be set aside by a reviewing court unless it is "*** erroneous as a matter of law or against the manifest weight of the evidence." Fisher v. Rose Chevrolet, Inc. (1992), 82 Ohio App.3d 520, 524, citing to Janell, Inc. v. Woods (1980), 70 Ohio App.2d 216, 217. Moreover, "[j]udgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." C.E. Morris Co. v. Foley Construction Co. (1978), 54 Ohio St.2d 279, at syllabus.

{¶39} In 1985, the Society adopted a constitution. As noted earlier, two of the articles within the constitution concern membership and voting. Article Three states that membership is for one calendar year to anyone who pays a one-dollar fee. Article Four states that those members of the Society who are over the age of 18, residents of the tri-state area and members for at least three months constitute the voting membership.

{¶40} The record relates that since the inception of the Society, the one-dollar fee was never separately collected or recorded. An early president and drafter of the 1985

constitution testified that one dollar was selected as the membership fee because "it's the tradition of the Sikh religion that *** when we come for worship we bow to the holy book, and traditionally, one dollar is the offering." Others also testified supporting the fact that when bowing to the holy book, the worshiper makes an offering.

{¶41} After reviewing the record, weighing the evidence and considering the credibility of the witnesses, we find that the trial court did not err in denying appellants' motion to dismiss. The decision is neither erroneous as a matter of law nor against the manifest weight of the evidence. Accordingly, appellants' third assignment of error is overruled.

{¶42} The judgment of the trial court is affirmed.

/s/ VALEN, J., concurs

/s/ WALSH, P.J., concurs in judgment only

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

PYARA SINGH BHATTI, et al.,

Plaintiffs-Appellees,

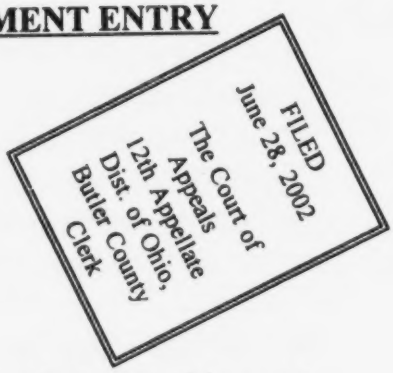
-vs-

JASBIR SINGH, et al.,

Defendants-Appellants.

CASE NO. CA2001-09-215

JUDGMENT ENTRY



The assignments of error properly before this court having been ruled upon as heretofore set forth, it is the order of this court that the judgment or final order herein appealed from be, and the same hereby is, affirmed.

It is further ordered that a mandate be sent to the Butler County Court of Common Pleas for execution upon this judgment and that a certified copy of this Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed in compliance with App.R. 24.

/s/ James E. Walsh, Presiding Judge
(Concurs in Judgment Only)

/s/ William W. Young, Judge

/s/ Anthony Valen, Judge

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

PYARA SINGH BHATTI, et al.,

PLAINTIFFS,

v.

JASBIR SINGH, et al.

DEFENDANTS.

Case Number: CV99 03 0587

Judge Sage

FINAL APPEALABLE ORDER

FILED
Aug. 24, 2001
Court of
Common Pleas,
Butler County,
Ohio
Clerk

This action came on for trial before the court at which time the issues were duly tried and a decision was duly rendered.

It is ordered and adjudged that:

1. An interim executive committee shall be formed for purposes of organizing and conducting an election in accordance with the constitution of the Guru Nanak Society. It shall be composed of Kawal Sethi, Anantpal Singh, Gurinder Kaur, Santokh Bhatti and Jaswant Singh.

2. Said interim executive committee shall deal with interim issues of the Guru Nanak Society and, no later

than 60 days after the entry of this order, call and conduct a meeting of the General Body of said Society for the purpose of electing an executive committee which shall in turn elect a president, secretary, treasurer and public relations officer for purposes of operating the Guru Nanak Society. The interim executive committee shall have the power to determine those persons eligible to vote as members of the Society in accordance with the constitution of the Guru Nanak Society.

3. The title to all property, including the gurudwara and the realty where it is located, shall be placed in the name of the Guru Nanak Society.

4. Defendants shall provide to the executive committee of the Guru Nanak Society a full accounting for any Society assets that any defendant or defendants has exercised dominion and control over.

5. Defendants shall indemnify and hold harmless the Society for any costs incurred by the defendants in this lawsuit. Defendants are ordered to reimburse the Society for any money of the Society or the corporation, Guru Nanak Society Gurudwara, that was expended or forwarded for the costs of this litigation within 60 days of the entry of this final appealable judgment.

6. Plaintiffs' request for attorney's fees is denied.

7. Defendants shall pay all court costs of this action.

8. The preliminary injunction of June 21, 1999, is hereby dissolved.

Dated: August 24, 2001

/s/ JUDGE MICHAEL J. SAGE, JR.

IN THE COURT OF APPEALS
COURT OF PLEAS
BUTLER COUNTY, OHIO

PYARA SINGH BHATTI, ET AL.

Plaintiffs,

vs.

JASBIR SINGH, ET AL.,

Defendants.

CASE NO. CV99-03-0587

Sage, J.

FILED
July 26, 2001

Court of
Common Pleas,
Butler County,
Ohio
Clerk

DECISION

The plaintiffs in the above captioned case filed a verified amended complaint seeking injunctive relief and an award of compensatory and punitive damages against the defendants.

In the plaintiff's amended complaint, they allege that they are members of the Defendant Guru Nanak Society, which they allege was organized in 1985 pursuant to a written constitution, a copy of which was attached to their amended complaint. According to the attached constitution, the purpose of the Society was the propagation of the teaching of Guru Nanak and the Sikh religion.

The individual defendants in the amended complaint are members of the Guru Nanak Society and are alleged to be members of an executive committee, who the plaintiffs claim, violated their authority and power by failing to follow the provisions of the constitution and by illegally and improperly creating an Ohio non-profit corporation, the Guru Nanak Society Gurudwara, which is also named as a co-defendant.

The plaintiffs seek an injunction enjoining the individual defendants and the corporation from the use of the name Guru Nanak Society and an injunction ordering the individual defendants and the corporation to convey back to the Society all assets, including the realty, which they claim to have been illegally conveyed and transferred from the Society to the corporation, and a return of all the books and records to the Society. They further seek an accounting for all the assets of the Society, including liabilities and incumbrances to the property of the Society. They further seek a meeting of the general body for the purposes of electing an executive committee pursuant to the constitution of the Society. They finally seek compensatory and punitive damages based upon the conduct of the defendants, along with attorney fees and other relief as the court may believe to be just and proper.

Both the plaintiffs and the individual defendants all practice the Sikh religion. The Sikh religion was founded by Guru Nanak (1469-1539) in the form of the ten Gurus in India. Nanak's thought was shaped under the influence of the Hindu Sant tradition of Northern India. The idealistic approach of Sikhism is that it recognizes the existence of the same heavenly Light in every human being, rich or poor, high or low, irrespective of caste, creed, color, race, sex, religion

or nationality. Based upon that relief, the doors of the Sikh temple (Gurudwara) are open for all in the world without prejudice or social discrimination. Under the Sikh belief, every person in this world has an equal right to enter and join the services in the Gurudwara. A discussion of the Sikh religion is relevant within the context of this decision because it is the driving force behind the organization under which the plaintiffs and defendants practice their religion.

What must also be discussed is this court's strong belief in the separation of church and state. American democratic society and its constitution are based upon the importance of freedom of religion and the freedom from government interference with the practice of that religion. This court, from its first dealings with this case through the present, remains concerned that the parties to this litigation are pursuing a religious agenda by framing that agenda in legal issues. This court is mindful that the parties on both sides practice the same religion, but also represent a continuum of beliefs concerning the appropriate practice of their religion in a contemporary American society.

The parties range from a very conservative and traditional belief to a more contemporary or liberal practice of the Sikh religion. This court's decision is based upon accepted American legal concepts, but it does so in a way which it feels would not in any way affect the freedom of religion of any of the parties to this litigation.

A full trial was held in which 27 members of the Guru Nanak Society testified on behalf of both sides. The court permitted both sides to file extensive pre-trial and post-trial

briefs, and for reasons cited in the court's opinion, the court believes that the plaintiffs are entitled to requested injunctive relief.

The Guru Nanak Society was first organized in southwestern Ohio in the 1970's for the purpose of practicing the Sikh religion. In the May of 1985 a formal constitution was adopted by the Guru Nanak Society listing its principle place of business to be in the City of Cincinnati, Hamilton County, Ohio. The stated purpose in the constitution was to propagate the teachings of Guru Nanak and the Sikh religion and to promote the religious, educational and cultural aspects of the Sikh religion. A final objective was to establish and maintain Sikh centers in the tri-state area.

Article Three of the constitution defined general memberships. It states that:

> "Any person irrespective of caste, creed, color, race or sex who subscribes to the objectives of the organization may become a member."

That section also provides that the annual membership fee shall be one dollar per person.

Article Four defines the voting membership. Article Four (A) states:

> "All members of at least three months standing and above the age of 18 shall be eligible to vote. All voting members shall constitute the General Body."

Article Five (A) of the constitution states:

> "The General Body alone, as a primary organ of the organization, shall have the power to amend or revise this constitution and the by-laws for the management of the affairs of the organization."

Article Six (A) deals with the organization of the executive committee. It states:

> "There shall be an executive committee consisting of at least five (5) and not more than seven (7) elected from the General Body membership."

This section further provides that any voting member of the organization can seek election to the executive committee. This article further provides that the executive committee has the authority to perform functions on behalf of the organization in accordance with the constitution and by-laws framed by the General Body from time to time.

Article Twelve provides that:

> "This constitution can be amended by a two-thirds (2/3) majority vote of the members either present at a General Body meeting or by votes submitted by any other means..."

The constitution became the working framework under which the Guru Nanak Society operated from its adoption through the present.

In 1993, the Sikh Temple of Greater Cincinnati came into existence through the filing of tax exempt forms through the state and local government. That organization co-existed at the same time as the Guru Nanak Society and both organizations continue to practice the Sikh religion. Starting in approximately 1993, an effort was made to build a gurudwara by the members of the Sikh community. In March of 1994, property was deeded from a member of the Sikh community to the Guru Nanak Society to be used for the construction of a gurudwara.

Contemporaneously with the attempt to build the gurudwara, there was also a significant fundraising effort going forward to attempt to obtain the funds for the construction of the temple. In addition, several efforts were underway by members of the Guru Nanak Society to amend the 1985 constitution and by-laws. Simultaneous to that, there were also discussions about formally incorporating the Guru Nanak Society under the laws of the State of Ohio.

In June of 1996 additional land was purchased for the construction of the gurudwara. Subsequently, a mortgage was filed in April of 1988 financing the construction of the temple on the new land. As part of the fundraising efforts, the fundraisers promised that any member who made a donation of five thousand dollars or more would become a permanent member of the board of trustees.

As previously mentioned, efforts were going on at the same time to incorporate the Guru Nanak Society to a non-profit corporation under the laws of the State of Ohio. An attempt was made to file the Articles of Incorporation during this time. However, those Articles were rejected by the

Secretary of State because they were improperly executed. It was not until February 26, 1999 that Articles of Incorporation were formally granted.

This followed a meeting at the gurudwara on January 17, 1999 in which the defendants claim that the Articles of Incorporation were approved by the General Body of the temple. That issue is strongly contested by the plaintiffs in this case.

The thrust of the plaintiffs' lawsuit is that the defendants improperly and illegally incorporated the Guru Nanak Society into a non-profit corporation and have improperly controlled the temple, its finances and operation as a result of the defendants' conduct.

As the court has previously mentioned, this court is loathe to interfere with the practice of any citizen's religion. This court's approach to this case is limited to making sure that the parties properly followed the constitution and by-laws of the Guru Nanak Society which they voluntarily adopted. This court also notes the very contentious and often violent confrontations which have occurred between the various parties to this litigation, which display the very emotional issues before the court, but are irrelevant to the legal issues before it.

This court has considered, as it indicated, in excess of 25 witnesses, has reviewed literally thousands of pages of documents and has carefully reviewed the Ohio Revised Code and case law concerning the formation operation of unincorporated societies and non-profit corporations.

The single document which all parties agree was the last properly executed document was the constitution and by-laws adopted in 1985 and attached to the plaintiff's complaint. Since then, there have been many attempts to modify the constitution and by-laws of the Guru Nanak Society and the formation of the non-profit corporation. Based on evidence and testimony before the court, the court believes the formal requirements to amend the by-laws and incorporate the Guru Nanak Society into a corporation have not been followed, and therefore, are void *ab initio*.

Because the court believes that the corporation and any suggested amendment of the 1985 constitution was improper, any acts done under color this amended constitution and corporation are invalid and of no legal authority. Therefore, the court makes the following conclusions. First, that the Guru Nanak Society has been improperly incorporated into a legal corporation under the laws of the State of Ohio.

Next, the Guru Nanak Society Corporation and the defendants therefore had no legal authority or power to use the name of the Society or to exercise dominion over any assets of the Society. This would include the gurudwara and the realty upon which it was built.

Because the court believes that the controlling document is the 1985 constitution, the defendants were under a fiduciary obligation to act on behalf of the Guru Nanak Society and the members of the Society.

The court further believes that the alleged promise for lifetime trusteeship in exchange for a gift of five thousand dollars is legally unenforceable because it violates both state law and the 1985 constitution.

As the court has indicated, the court is of the opinion that the defendants had a fiduciary obligation to the Guru Nanak Society. The court believes that their acts in trying to attempt to place the realty and incurring obligations on behalf of the Guru Nanak Society, including payment of attorney fees for their defense, were inappropriate and in violation of that fiduciary obligation.

Based upon the 1985 constitution which the court considers to be the controlling document, the court orders that an interim executive committee be formed for the purpose of organizing and conducting an election in accordance with the constitution of the Guru Nanak Society. The court directs the plaintiff's council to submit a list of five members of the Guru Nanak Society to serve as the interim executive committee whose purpose will be to deal with the interim issues of the Guru Nanak Society while a meeting of the General Body can be held during which the General Body can elect an executive committee, who will then in turn elect a president, secretary, treasurer and public relations officer for purposes of operating the Guru Nanak Society. The interim executive committee shall have the power to determine those persons eligible to vote as members of the Society in accordance with the constitution of the Guru Nanak Society.

Because the court believes that the transfer of the real property for the gurudwara was illegal, the court orders that

the title to all property, including the gurudwara and realty where it is located shall be placed in the name of the Guru Nanak Society.

The court further orders that the defendants provide to the executive committee of the Guru Nanak Society a full accounting for any Society assets that they have previously exercised dominion and control over. The court further orders that the defendants indemnify and hold harmless the Society for any costs incurred by the defendants in this lawsuit. They are further ordered to reimburse the Guru Nanak Society for any money that was forwarded for the cost of this litigation within 60 days of the entry of the final appealable order in this case.

As to the plaintiff's claim for attorney fees, the court does not believe that the payment of attorney fees is appropriate. The court notes that certainly all parties involved in this case are involved in a very emotional and contentious litigation. However, the court believes there was no malice or ill will exercised by any party other than what they believe to be their right to practice religion.

Plaintiff's counsel is ordered to prepare a final appealable order to be presented to this court within 21 days of the date of the filing of this opinion.

So ordered

/s/ Michael J. Sage, J.

Copies to:

David S. Mann, Esq.
2250 Kroger Building
1014 Vine Street
Cincinnati, OH 45202-1141

Roger S. Gates, Esq.
Morgenstern & Gates Co., L.P.A.
300 High Street, Suite 300
Hamilton, OH 45011